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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
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13 CESAR SCOLARI RUIZ,
14 Defendant-Petitioner,
15 v.
16
17 UNITED STATES OF AMERICA,
18 Respondent.
19

CASE NO. 10-CR-3681 W
11-CV-1526 W

ORDER DENYING MOTION
FOR TIME REDUCTION
UNDER 28 U.S.C. 2255
[DOC. 27]

20 Pending before the Court is a Motion for Time Reduction under 28 U.S.C. § 2255
21 (the “Motion”) by Petitioner Cesar Scolari Ruiz (“Petitioner”), a federal prisoner
22 proceeding *pro se*. Respondent United States of America (“Respondent”) opposes. The
23 Court decides the matter on the papers submitted and without oral argument. See
24 Civil Local Rule 7.1 (d.1). For the reasons stated below, the Court **DENIES** the Motion
[Doc. 22].

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1 **I. BACKGROUND**

2 On October 28, 2010, Petitioner pled guilty to attempted illegal reentry after
3 deportation, in violation of 8 U.S.C. § 1326. (See *Minute Entry* [Doc. 9]; *Plea Agree.*
4 [Doc. 10] ¶ I.) In the signed Plea Agreement, Petitioner agreed to waive his right to
5 appeal or collaterally attack his conviction and sentence. (*Plea Agree.* ¶ XI.)

6 On May 25, 2011, the Court sentenced Petitioner to 48 months in custody and
7 three years supervised release. (See *Judgment* [Doc. 19] 2-3.) Notwithstanding
8 Petitioner's guilty plea, Petitioner filed the pending Motion arguing that his alleged
9 ineligibility for Bureau of Prisons ("BOP") programs, such as halfway-house custody, due
10 to his alien status violates his Constitutional rights.

11 Respondent opposes the Motion arguing, among other things, that Petitioner
12 waived his right to collaterally attack his sentence. The Court agrees with Respondent.

13
14 **II. DISCUSSION**

15 Courts have repeatedly upheld the validity of appeal waivers finding that "public
16 policy strongly supports plea agreements." United States v. Navarro-Botello, 912 F.2d
17 318, 321 (9th Cir. 1990); see also Brady v. United States, 397 U.S. 742, 752 n. 10
18 (1970); United States v. Wiggins, 905 F.2d 51, 53 (4th Cir. 1990). Courts will enforce
19 a Petitioner's appeal waiver if (1) the waiver is knowingly and voluntarily made; and (2)
20 the waiver, by its terms, waives the right to appeal. United States v. Nunez, 223 F.3d
21 956, 958 (9th Cir. 2000).

22 First, a valid waiver requires that the Petitioner agreed to its terms knowingly and
23 voluntarily. See id. A reviewing court looks to the circumstances that surround the
24 plea agreement's signing and entry to determine whether a defendant agreed to its terms
25 knowingly and voluntarily. See United States v. Baramdyka, 95 F.3d 840, 843 (9th Cir.
26 2000).

27 In the present case, Petitioner entered into the Plea Agreement with his
28 attorney's advice and consent (*Plea Agree.* p.1), and Petitioner represented that he fully

1 understood the agreement (*Id.* ¶ XIV). Petitioner also represented that his plea was
2 knowing and voluntary. (*Id.* ¶ I(b).) And Petitioner represented that he was satisfied
3 with his attorney's performance. (*Id.*, ¶ XIV.) Thus, the Court concludes that Petitioner
4 knowingly and voluntarily agreed to waive his right to appeal or collaterally attack his
5 sentence.

6 Second, a valid waiver must also explicitly state that Petitioner is waiving his right
7 to appeal. See Nunez, 223 F.3d at 958. A reviewing court applies contract principles,
8 including the parol evidence rule. See United States v. Ajugwo, 82 F.3d 925, 928 (9th
9 Cir. 1996). Under the parol evidence rule, a court enforces the contract's plain
10 language and does not look to "extrinsic evidence . . . to interpret . . . the terms of an
11 unambiguous written instrument." Wilson v. Arlington Co. v. Prudential Ins. Co. Of
12 Am., 912 F.2d 366, 370 (9th Cir. 1990). Here, the Plea Agreement explicitly states, in
13 relevant part:

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15 In exchange for the Government's concessions in this plea agreement,
16 defendant waives, to the full extent of the law, any right to appeal or to
17 collaterally attack the guilty plea, conviction and sentence, including any
18 restitution order, unless the court imposes a custodial sentence above the
19 greater of the high end of the guideline range recommended by the
20 Government pursuant to this agreement at the time of sentencing or
21 statutory mandatory minimum term, if applicable. If the custodial
22 sentence is greater than the high end of that range, the defendant may
23 appeal, but the government will be free to support on appeal the sentence
24 actually imposed. If defendant believes the United States'
25 recommendation is not in accord with this plea agreement, defendant will
26 object at the time of sentencing; otherwise the objection will be deemed
27 waived.

28 (*Plea Agree.* ¶ XI.) Petitioner, therefore, agreed to waive his right to appeal or
collaterally attack his sentence so long as the Court did not sentence him to a sentence
exceeding the greater of (1) the statutory mandatory minimum term or (2) the high end
of the guideline range recommended by Respondent. The high end of the guideline

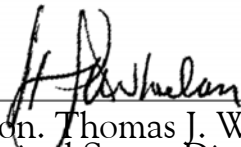
1 range recommended by Respondent is 51 months. Because Petitioner's 48-month
2 custodial sentence did not exceed the high end of the guideline range recommended by
3 Respondent, the Plea Agreement's terms bar Petitioner's attack on his sentence. The
4 Court is, therefore, prevented from granting the habeas relief requested in the Motion.
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6 **III. CONCLUSION AND ORDER**

7 In light of the foregoing, the Court **DENIES** Petitioner's Motion [Doc. 27]. The
8 Clerk of the Court shall close the district court file.
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10 **IT IS SO ORDERED.**
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12 DATED: January 17, 2012
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16 Hon. Thomas J. Whelan
17 United States District Judge
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